LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 21 1962
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1961

No. 468

In the Matter of the Application of

STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,

Petitioners,

—against—

WILLIAM J. VITALE, JR., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,

Respondents,

directing them to discontinue a certain school practice,

—and—

HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSE-MARIE PETELENZ, DANIEL J. REEHIL, THOMAS DELANEY and EDWARD L. MACFARLANE,

Intervenors-Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

OBJECTIONS OF RESPONDENTS AND INTERVENORS-RESPONDENTS TO MOTION BY THE AMERICAN ETHICAL UNION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

BERTRAM B. DAIKER
Counsel for Respondents
49 Main Street
Port Washington, New York

Of Counsel:
WILFORD E. NEIER

THOMAS J. FORD
Counsel for Intervenors-Respondents
117 Pennsylvania Avenue
Brooklyn 7, New York

Of Counsel:
PORTER R. CHANDLER
RICHARD E. NOLAN

Dated: New York, New York
February 20, 1962

Supreme Court of the United States

OCTOBER TERM, 1961

No. 468

In the Matter of the Application of

STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,

Petitioners,

—against—

WILLIAM J. VITALE, JR., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,

Respondents,

directing them to discontinue a certain school practice,

—and—

HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSEMARIE PETELENZ, DANIEL J. REEHIL, THOMAS DELANEY and EDWARD L. MACFARLANE,

Intervenors-Respondents.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF NEW YORK

OBJECTIONS OF RESPONDENTS AND INTERVENORS-RESPONDENTS TO MOTION BY THE AMERICAN ETHICAL UNION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

This litigation involves the validity under the First and Fourteenth Amendments to the United States Constitution of the "Regents' Prayer", a voluntary non-denominational prayer composed and recommended by the Board of Regents of the University of the State of New York and adopted for use in the public schools of Union Free School District No. 9, New Hyde Park, New York, pursuant to resolution adopted by respondent School Board on July 8, 1958. Each of the parties hereto has a direct and immediate interest in the outcome of the case and in the constitutional status of the Regents' Prayer. Petitioners, one of whom (Monroe Lerner) is a member of the Society for Ethical Culture, are taxpayers of the School District and the parents of children actually attending the public schools of the District (R. 11-12, 54).* Each of the intervenors-respondents is and, throughout the course of this litigation has been, a taxpayer of the district and a parent of children actually attending the schools of the district (R. 54). They are the parents of thirty-seven children attending the various schools of the district and these intervenors-respondents include members of the Hebrew, Protestant and Catholic faiths, and one (Evelyn Koster) who is a member of no organized church. Respondent School Board has an obvious interest in this litigation which will affect practices approved by it for non-compulsory use in its schools. The Board of Regents of the University of the State of New York has participated as *amicus curiae* throughout the

* Except as otherwise identified, references are to pages of the Record on Appeal submitted to this Court by petitioners in support of their petition for writ of certiorari.

litigation in the courts of New York, and has moved for leave to file a brief *amicus curiae* in this Court, because of its obviously direct interest in sustaining the constitutional validity of the Prayer, composed and recommended by it.

Respondents and intervenors-respondents oppose the application of the American Ethical Union for leave to file a brief *amicus curiae* in this Court. It should be noted that the arguments which this organization hopes to present are the allegedly sectarian nature of the Prayer and the claim of inherent psychological coercion upon dissenters (Motion, p. 3). These arguments have been thoroughly presented in the New York courts by counsel for petitioners and it is highly probable that such contentions will be reiterated in this Court. No claim is or can be made that counsel for petitioners are not fully competent in all respects to present these and other arguments to this Court.

As is true of the various other private organizations which have moved for similar permission, the American Ethical Union has no direct interest in this litigation and the fact that one of the petitioners is a member does not warrant the submission of an *amicus curiae* brief by this organization. Were this the case, numerous groups representing or purporting to represent all varieties of religious belief and experience would be entitled to similar treatment before this Court. Indeed, counsel for respondents have refused a number of similar requests by organizations affiliated with civic, religious or ethnic groups, some favoring the Prayer and others opposed to it.

It is our position, as expressed in previous objections to similar motions before this Court, that the orderly presentation of this case requires that participation be limited to parties having a direct interest in the constitutional status of the Regents' Prayer or having a right to file *amici*

curiae briefs under the Rules of this Court. The American Ethical Union has neither a direct interest in this litigation nor a right to participate under the Rules of this Court and it is therefore submitted that it should not be permitted to participae as *amicus curiae*.

It is therefore respectfully submitted that, under these circumstances, the wholesale filing of *amici* briefs by private organizations claiming some indirect interest in the litigation can serve no useful purpose and can lead only to unnecessary complications. For that reason it is respectfully submitted that the present motion by the American Ethical Union for leave to file a brief *amicus curiae* should be denied.

Dated: New York, New York
February 20, 1962

Respectfully submitted,

BERTRAM B. DAIKER
Counsel for Respondents
49 Main Street
Port Washington, New York

Of Counsel:

WILFORD E. NEIER

THOMAS J. FORD
Counsel for
Intervenors-Respondents
117 Pennsylvania Avenue
Brooklyn 7, New York

Of Counsel:

PORTER R. CHANDLER
RICHARD E. NOLAN